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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

17 CR 0047 (DLC)

5 MAHMOUD THIAM,

6 Defendant.

7 -----x  
8 New York, N.Y.  
9 August 25, 2017  
11:34 a.m.

10 Before:

11 HON. DENISE COTE,

12 District Judge

13  
14 APPEARANCES

15 JOON H. KIM,  
16 Acting United States Attorney for the  
Southern District of New York

17 ELISHA KOBRE  
CHRISTOPHER DiMASE  
18 Assistant United States Attorneys  
LORINDA LARYEA  
19 Department of Justice Attorney

20 AARON M. GOLDSMITH  
JONATHAN ISIDOR EDELSTEIN  
21 Attorneys for Defendant

22 ALSO PRESENT: SPECIAL AGENT CHRISTOPHER MARTINEZ, FBI  
23 ALEXANDER BEER, Paralegal to AUSAs  
24 JENNIE CARMONA, Paralegal to Mr. Goldsmith  
25

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(In open court)

(Case called)

MR. KOBRE: Good morning, your Honor. Elisha Kobre, Lorinda Laryea and Christopher DiMase for the government, and with us at counsel table, as well, Special Agent Christopher Martinez with the FBI, and Alex Beer, a paralegal from our office.

THE DEPUTY CLERK: Thank you. And for the defendant, are you ready?

MR. GOLDSMITH: Ready. Aaron Goldsmith on behalf of Mr. Thiam, who's present in court this morning. With me at counsel table is also Jennie Carmona, paralegal, and Jonathan Edelstein, who recently appeared.

THE COURT: Thank you. Can I see counsel at the sidebar, please.

(At the side bar)

THE COURT: So I wanted to raise with counsel what I understand happened before I came on the bench in which the defendant's counsel's paralegal greeted, in a warm embrace, one of the marshals --

MR. GOLDSMITH: Okay.

THE COURT: -- in this public courtroom. That should never happen again.

MR. GOLDSMITH: Okay. Very well, your Honor.

THE COURT: Thank you very much.

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(In open court)

THE COURT: Let me ask you, Mr. Goldsmith, have you and your client both read the presentence report?

MR. GOLDSMITH: We have.

THE COURT: Have you both discussed it with each other?

MR. GOLDSMITH: Yes.

THE COURT: Do you have any objections to it, other than what might be contained in your written sentencing submissions?

MR. GOLDSMITH: No.

THE COURT: Thank you. The presentence report will be made part of the record in this case and placed under seal. If an appeal is taken, counsel on appeal may have accessed to the sealed report without further application to this Court.

You may be seated. Thank you, Mr. Goldsmith.

MR. GOLDSMITH: Well, I guess I should clarify that in my objections, I raised the loss value calculation based upon the three-and-a-half million figure. In going back in preparation of the sentencing, looking not only at the complaint and all the way through, it appeared as though the government had shown a number of about 3 million had actually, for lack of a better term, entered U.S. soil. That was contained in my objection, using the lower figure, but I just wanted to clarify that for the record.

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1 THE COURT: Okay. Let's circle back to that issue  
2 because I'm not sure I understand its implications for this.  
3 I'm not sure I understand what figures you're relying on, but  
4 let me just get through the procedural framework first, and  
5 then let's circle back to that.

6 MR. GOLDSMITH: Thank you.

7 THE COURT: Good. So we have submissions from defense  
8 counsel and from the government in connection with this  
9 proceeding. The government's sentencing memorandum was filed  
10 on ECF on August 4th. I have the following submissions from  
11 defense counsel. I have a letter of July 12th, July 28th,  
12 August 23, and August 22 from Mr. Goldsmith. I have a  
13 submission of August 14th from Mr. Edelstein.

14 Now, Mr. Goldsmith, you're appointed counsel in this  
15 case.

16 I understand, Mr. Edelstein, you are not?

17 MR. EDELSTEIN: I am not, your Honor. You are  
18 correct, your Honor. I am not appointed in this case. I have  
19 been engaged by the family to review the record for purposes of  
20 a possible appeal, and that led me to get involved in some  
21 aspects of the sentencing, as well.

22 THE COURT: Okay. I'm happy to take your submission,  
23 Mr. Edelstein but, of course, public funds have been used to  
24 pay for appointed counsel, and if the defendant comes into  
25 possession of funds such that there should be a reimbursement

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1 to the government for those public funds invested in support of  
2 his defense, obviously, that's something that I have a duty to  
3 inquire into, and I'm sure you're aware of that.

4 MR. EDELSTEIN: I am aware of that, your Honor. Once  
5 I became aware that Mr. Thiam had been appointed counsel, which  
6 I hadn't initially been aware of, and when I found that out, I  
7 inquired of Mrs. Thiam regarding the source the funding. And  
8 she has stated that the source of the funding comes from  
9 relatives in various countries, that none of it is Mr. Thiam's  
10 funds.

11 THE COURT: Thank you so much for clarifying that. I  
12 appreciate it.

13 MR. GOLDSMITH: If I may, for the record, it's also my  
14 understanding, in conversations with Mr. Thiam's family and  
15 with Mr. Edelstein, that he was only paid out of those funds  
16 raised from family a very nominal amount for sentencing review  
17 purposes and has not received further funds.

18 THE COURT: Thank you, Mr. Goldsmith.

19 Mr. Goldsmith, I think my chambers raised with you the  
20 fact that one of the letters submitted with the July 28th  
21 submission is illegible.

22 MR. GOLDSMITH: Yes.

23 THE COURT: Now, you have, and I found them  
24 extraordinarily helpful, submitted many letters to me. This is  
25 the only one I found to be illegible, but I understand you

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1 don't have a better copy of it.

2 MR. GOLDSMITH: I do not. Ms. Rojas and I reviewed my  
3 copy this morning. It is the same quality that the Court has,  
4 but as the Court stated, there were numerous letters from  
5 family and friends.

6 THE COURT: Good. Thank you so much. So I think  
7 we're ready to proceed without worrying further about that one  
8 letter.

9 The probation department calculates the offense level  
10 here as 32, the criminal history category as I, leading to a  
11 guidelines range of 121 to 151 months in prison.

12 The government has raised an issue as to whether or  
13 not there shouldn't be an obstruction of justice enhancement  
14 under 3C1.1, which would give us an offense level of 34 and a  
15 criminal history category of I, with a guidelines range of 151  
16 months to 188 months in prison.

17 The defendant seeks a sentence of 60 months. The  
18 probation department recommends a sentence of 121 months on  
19 Count Two and a concurrent sentence of 120 months on Count One,  
20 and that would be at the lowest end of the guidelines range  
21 that it calculated.

22 There is an issue of forfeiture here, with a proposed  
23 order of forfeiture here from the government of \$8.5 million.  
24 Is there any objection to entry of the forfeiture?

25 MR. GOLDSMITH: Your Honor, I don't believe Mr. Thiam

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1 has standing to enter an objection at this time because, as  
2 there was testimony and exhibits put forth on the record, the  
3 title is in another individual's name or corporation's name.

4 THE COURT: Okay. The defendant making no objection,  
5 I will execute the proposed order of forfeiture.

6 Let's turn to those two issues that I flagged. One,  
7 Mr. Goldsmith, the issue that you raised before about the  
8 amount of money. There was proof here at trial, which was  
9 really overwhelming, that the bribe amount paid was  
10 eight-and-a-half million dollars, but I want to make sure I  
11 understand your argument with respect to a lesser sum.

12 MR. GOLDSMITH: My argument is very clear, that the  
13 offense that Mr. Thiam is charged with and was convicted of was  
14 laundering of proceeds from the bribe, not the bribe itself.

15 The U.S. had zero jurisdiction over that bribe. The  
16 bribe, taken upon the evidence that was adduced at face value  
17 over the testimony of Mr. Thiam, was that that fund, the  
18 eight-and-a-half million dollars' worth, remained in Hong Kong.  
19 It was not transferred to U.S. soil. There were not payments  
20 made in those values to U.S. soil.

21 The only funds that can be considered by this Court as  
22 a loss value, for sentencing purposes, are the funds that  
23 actually enter U.S. jurisdiction. Those funds, by the  
24 complaint, all the way through the evidence that came forward  
25 at trial, was in an amount of about \$3 million, which is the

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1 lesser category, sentencing-wise, which would have been the  
2 16-point enhancement.

3 So it would have meted out with a base offense level  
4 of eight, 16-point enhancement, and the two points for  
5 sophistication, which was conceded in the defense sentencing  
6 memorandum, which is only metered out to a sentencing  
7 guidelines of 63 months at a low end.

8 So those figures of the amount actually brought into  
9 the U.S. versus the total amount alleged by the government to  
10 have been received by Mr. Thiam internationally becomes a  
11 significant issue in terms of the stipulated -- well, in terms  
12 of the guidelines that are appropriate in this case. That was  
13 the one concern.

14 The other concern that I had, in response to the  
15 government's calculations, were their request for abuse of  
16 trust, which I don't think was proven out in any fashion, and  
17 more specifically, this obstruction argument that it appears,  
18 in my experience, the U.S. Attorney's Office always makes an  
19 argument for if there's a defendant who is convicted after  
20 testifying at trial, in some sort of a policy basis of trial  
21 tacts, for lack of a better term, without substantial evidence  
22 of same.

23 If they had really felt that Mr. Thiam perjured  
24 himself in front of this jury, I have no doubt that the U.S.  
25 Attorney's Office would have levied a perjury charge against



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1 him, as I've had that happen in one instance in the past.

2 Otherwise, I think that not only is this just a rote  
3 policy argument by the U.S. Attorney's Office, but also the  
4 Court could note that in their summation, the government made  
5 reference to an alternative theory, following Mr. Thiam's  
6 testimony, about the funds transferred to him from Mr. Pa and  
7 his associates being a loan. In which the government asserted  
8 to the jury even if it was a loan, you know, it still would  
9 have been a loan with no interest to an individual in political  
10 office, should be taken, in sum and substance, as a bribe.

11 So the jury could have very well believed Mr. Thiam's  
12 testimony that it was a loan and still believe that it was a  
13 bribe, but for those reasons, that's why we take issue with the  
14 probation's calculation and the government's argument for  
15 enhancements.

16 THE COURT: Thank you. So let's look at the  
17 presentence report. I did not understand from your written  
18 sentencing submissions precisely what you're telling me right  
19 now, and I thank you for that explanation. So I'm on page 6 of  
20 the presentence report, and the paragraph 23 has a base offense  
21 level of 26. Now, that includes, from the presentence report's  
22 calculation, a base offense level of 8 and then an adjustment  
23 because of the amount of laundered funds, which it names as  
24 \$8.5 million.

25 And your argument is that only \$3 million came into

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1 this country?

2 MR. GOLDSMITH: Correct.

3 THE COURT: Now, the presentence report indicates that  
4 you had argued that 3.5 million had come into this country.

5 MR. GOLDSMITH: The 3.5 was the threshold that I put  
6 in under the guidelines, rather than the actual amount, and as  
7 I went in to investigate the matter further in preparation of  
8 the sentencing, the numbers that we found, not only from the  
9 complaint that was filed in this case through the evidence that  
10 was adduced at trial, the number is about 3 million. So it  
11 brings it to that lower threshold.

12 THE COURT: So you would have an offense level of 24  
13 as opposed to 26?

14 MR. GOLDSMITH: Correct.

15 THE COURT: Okay. And then there is another  
16 adjustment in the presentence report because of 1956, which is  
17 a two-level adjustment. You do not dispute that as  
18 appropriate?

19 MR. GOLDSMITH: No, we do not.

20 THE COURT: And then special offense characteristics,  
21 two levels for use of sophisticated means, et cetera; you do  
22 not dispute that?

23 MR. GOLDSMITH: The problem I have with that, your  
24 Honor, is that the sophisticated -- I don't think the  
25 transferring money from one account in your name to another

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1 account in your name is sophisticated.

2 THE COURT: So you are disputing that?

3 MR. GOLDSMITH: Yes.

4 THE COURT: You are or not?

5 MR. GOLDSMITH: We are.

6 THE COURT: Okay. Then there is a role in the offense  
7 adjustment under 3(b)(1.3), where the probation department  
8 includes a two-level enhancement for abuse of trust. Are you  
9 disputing that?

10 MR. GOLDSMITH: Yes.

11 THE COURT: What is your argument as to why the  
12 position of Minister of Mines and taking a bribe in connection  
13 with official duties while holding that position is not an  
14 abuse of trust?

15 MR. GOLDSMITH: There was no evidence adduced at trial  
16 that Mr. Thiam affirmatively exploited his position, being that  
17 he never went out to individuals promising a level of trust and  
18 a level of fiduciary responsibility, to then take that money  
19 like we might see if an attorney is indicted or if a  
20 stockbroker or financial analyst is indicted; that while he had  
21 a position that was high-ranking in the government, that, in  
22 and of itself, doesn't make him abuse his trust. The abuse of  
23 trust is typically exposed when one preys upon the individuals  
24 who are trusting of that fiduciary responsibility.

25 THE COURT: Okay. So I didn't see any of these

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1 arguments developed in the submissions or laws cited to me in  
2 connection with these. I'm sorry to take the time now to work  
3 through it, but I want to make sure.

4 MR. GOLDSMITH: I'm glad you are, your Honor. It's  
5 important. I note that the only concession that we made in the  
6 sentencing memo was the two points under 1956.

7 THE COURT: Okay. I'm looking at the application  
8 notes to 3(b)(1.3), particularly application note one, and this  
9 adjustment applies when the position of public trust is  
10 characterized by professional or managerial discretion. And,  
11 of course, as Minister of Mines, the defendant was given vast  
12 discretion in terms of using his position to advise other  
13 government ministers and to negotiate on behalf of the nation  
14 of Guinea.

15 Another component is that the position of trust must  
16 have contributed in some significant way to facilitating the  
17 commission or concealment of the offense.

18 I find this aspect is also met here with the proof  
19 adduced at trial. The bribe was paid by the Chinese officials  
20 for the very purpose of influencing the defendant's execution  
21 of his job as Minister of Mines during the negotiation of a  
22 very lucrative contract that touched upon vast amounts of  
23 natural resources of the government of Guinea.

24 The defendant's acceptance and support of the  
25 transaction as Minister of Mines was critical to the

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1 transaction. He was a necessary participant in those  
2 discussions. His signature appears on critical documents  
3 associated with the transaction. So I find that the two-level  
4 enhancement for abuse of trust is appropriately entered by the  
5 probation department, and I adopt it as my own.

6 Let's turn to the amount in connection with the  
7 calculation of the base offense level.

8 MR. GOLDSMITH: Your Honor, if I may briefly  
9 interject? I'm sorry to interrupt.

10 THE COURT: No, I'm sorry, Mr. Goldsmith. I gave you  
11 an opportunity to be heard.

12 MR. GOLDSMITH: Okay.

13 THE COURT: We're going to move on.

14 With respect to the consideration of the amount of  
15 money for assessing the base offense level, Count One had, and  
16 as I charged the jury, five different elements. Among those  
17 was that the transaction at issue, the financial transaction at  
18 issue, either took place in the United States or took place  
19 outside the United States, but the defendant is a United States  
20 person. There's no dispute that the financial transaction  
21 itself at issue here, the \$8.5 million, was the amount of the  
22 bribe paid to the defendant.

23 Again, I note that it would make a two-level  
24 difference with respect to the probation department's  
25 calculation, and I believe that the probation department has

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1 correctly calculated it.

2 Let's turn to the next issue, that specific offense  
3 characteristics, the use of sophisticated means, and that is an  
4 enhancement that is made under 2S1.1(b)(2)(C)(3). That is an  
5 offense level that applies if the defendant was convicted under  
6 section 1956, and he was. Therefore, that adjustment is  
7 appropriate.

8 That leaves us the issue about the adjustment for  
9 obstruction of justice, and as I understand it, this adjustment  
10 is sought by the government for what it contends was the  
11 defendant's perjury at trial. That adjustment is under 3C1.1.

12 First issue, of course, is whether or not there was  
13 perjury, and I find that there was, by clear and convincing  
14 evidence, indeed, beyond a reasonable doubt, that the defendant  
15 gave false testimony under oath at trial. He did so with the  
16 specific intent to deceive the jury and to mislead them about  
17 what had happened here, and it was, of course, about a material  
18 matter. It was in connection with the circumstances under  
19 which he received the \$8.5 million. So he hoped to obtain a  
20 not guilty verdict by his testimony. Therefore, I find that  
21 enhancement under 3C1.1 to also be appropriate.

22 So I think I've addressed each of the guidelines  
23 calculation disputes that have been raised, and so the offense  
24 level is 34, the criminal history category is I, the guidelines  
25 range is 151 to 188 months.

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1           There are a number of issues that have been  
2 highlighted by the defendant's papers seeking a variance from a  
3 guidelines range. They include the great difficulties he  
4 confronted when in Guinea; that Guinea is not materially worse  
5 off because of the receipt of the bribe or the contract with  
6 the Chinese; that a comparable defendant in an FCPA case  
7 received a sentence of 24 months; that the receipt of the bribe  
8 was an isolated act in an otherwise exemplary life and would be  
9 considered properly aberrant behavior; and as well, that he's  
10 engaged in a lifetime of good works, at least as an adult,  
11 supporting many poor individuals in Africa to obtain higher  
12 education, to obtain education in an environment that they  
13 would not otherwise have had access to, and in a variety of  
14 ways supporting the communities in Africa in which they live.  
15 These, I think, are the principal themes of the request for a  
16 non-guidelines sentence.

17           I'll hear from the government.

18           MR. KOBRE: Just very briefly, your Honor. If I could  
19 just start by just addressing two issues that come up in the  
20 context of the Court's guidelines rulings, not so much with  
21 respect to those rulings, but just because I think they are  
22 relevant to your Honor's consideration of the factors, the  
23 sentencing factors under section 3553.

24           The first one relates to the enhancement for  
25 sophisticated laundering, and I know that your Honor pointed

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1 out that it applies here because the defendant was convicted  
2 under 18 USC 1956, and I would just point out for your Honor,  
3 and I know we were all here for trial, that the defendant's  
4 offense in this case involved offshore financial accounts and  
5 transactions in several different foreign countries in an  
6 effort to conceal the source of the proceeds that he was using  
7 here in the United States.

8 Just also to address briefly, with respect to the  
9 obstruction, your Honor is correct that the government only  
10 sought an obstruction enhancement here based on the defendant's  
11 perjury at trial. The government did not, but considered and  
12 perhaps could have, sought obstruction here, as well, on the  
13 basis of not only the defendant's lies to the FBI during his  
14 post-arrest interview, but also as well, under the commentary  
15 in the guidelines for the defendant's conduct even  
16 pre-investigation, to the extent that it was intended to  
17 ultimately thwart the eventual investigation and prosecution of  
18 his crimes.

19 For that, I would point your Honor to application note  
20 one, the second paragraph of 3C1.1, which indicates that  
21 obstructive conduct that occurred prior to the start of the  
22 investigation of the instant offense of conviction may be  
23 covered, as well under the obstruction guideline if the conduct  
24 was purposely calculated and likely to thwart the investigation  
25 or prosecution of the offense of conviction.



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1           Again, the government has not sought obstruction on  
2           that basis, or on the basis of the lies to the FBI. I just  
3           wanted to point out that that is conduct in the same nature as  
4           what occurred here at trial.

5           I think, your Honor, the government generally just  
6           rests on its submission, but I do want to sort of respond to  
7           the submission that was put in by co-counsel regarding the harm  
8           to Guinea and whether that existed or not. I would just want  
9           to make three points on that for your Honor's consideration.

10          The first is that the evidence at trial showed that,  
11          in fact, there was harm to Guinea. As we pointed out in our  
12          submission and cited to the transcript, trial transcript, the  
13          Court heard testimony from the Daouda Camara, who is a senior  
14          advisor to the prime minister, and here is a quote that the  
15          sovereign, under the exclusivity provision of the shareholders  
16          agreement, the sovereign rights of the Republic of Guinea  
17          regarding its natural resources were practically removed from  
18          Guinea. And, really, there was no evidence in the record that  
19          really contradicted that. So that's the first point.

20          I would just add to that, your Honor, that putting  
21          that issue aside, whether the actual agreement itself was  
22          harmful to Guinea, the \$8.5 million that the defendant received  
23          is money that deprived -- that could have gone to the citizens  
24          of Guinea, as opposed to the defendant. So, you know, I think  
25          at some point in the defense submission, it is pointed out that

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1 this money did not come from the coffers of the Republic of  
2 Guinea. Nonetheless, it is essentially stealing honest  
3 services essentially from the Republic of Guinea. And as your  
4 Honor heard here at trial, \$8.5 million would go a long way in  
5 the Republic of Guinea.

6 And then third, and last, your Honor, you know, the  
7 only reason this issue of harm is before the Court, or only  
8 reason why we have this question now, to the extent that it is  
9 a question, is that the defendant chose to accept an \$8.5  
10 million bribe in exchange for taking the actions that he did.  
11 There's a good reason why, under both Guinean law and under  
12 U.S. bribery law, the question of harm, or whether the action  
13 would have otherwise been taken, is not required to prove a  
14 conviction, and that's because taking a bribe injects an  
15 element of self-interest into that decision-making process that  
16 shouldn't be there.

17 And just lastly, your Honor, I'll close with this.  
18 You know, as we pointed out in our submission, we think that in  
19 this case, one of the most important factors for the Court to  
20 consider is deterrence. These sorts of cases, as we pointed  
21 out, are difficult to investigate. They're difficult to  
22 prosecute. There are events that occur overseas, records have  
23 to be obtained from overseas, and corruption is rampant. And,  
24 as the Patriot Act makes clear, Congress took very seriously,  
25 in passing that provision, that the U.S. financial systems

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1 definitively not be used to allow the proceeds of that sort of  
2 corruption to enter into the United States or to be laundered  
3 by citizens of the United States.

4 So for that reason, your Honor, the government asks  
5 that the Court impose a guidelines sentence, as the Court  
6 calculated the guidelines earlier today.

7 THE COURT: Thank you.

8 Mr. Goldsmith.

9 MR. GOLDSMITH: If it please the Court, Mr. Edelstein  
10 would like to respond to the government's response to his  
11 submission as to the harm to Guinea.

12 THE COURT: I'll just hear from you, Mr. Goldsmith.  
13 Thank you. I'm sure you and Mr. Edelstein have consulted  
14 significantly on this. Thank you. Do you want a brief moment  
15 to speak with him?

16 MR. GOLDSMITH: One second.

17 (Pause)

18 Our brief response is going to the government's  
19 argument in its sentencing submission and Mr. Kobre's comments  
20 earlier, there was a notion of the loss to the Guinean people  
21 about this eight-and-a-half million dollars. There was no  
22 indication whatsoever in any discovery, in any evidence, in any  
23 testimony at this trial that Mr. Pa, Mr. Leong, or anyone else  
24 associated with the Queensland Group entities, ever had any  
25 opportunity or intention of taking that eight-and-a-half

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1 million dollars that were transferred to the Hong Kong account  
2 and Mr. Thiam, and somehow giving that directly to the people  
3 of Guinea or providing infrastructure or anything like that.

4 So for the government to argue that the Guinean people  
5 have suffered a loss from the alleged bribe is without any  
6 merit whatsoever, without even any consideration, especially --

7 THE COURT: You mean a monetary loss?

8 MR. GOLDSMITH: Any attempt of the loss because, as  
9 the Court and the parties are well aware, we worked very  
10 diligently to keep the issue of ultimacy away from the jury in  
11 considering this case because, even as Mr. Kobre stated this  
12 morning, it is irrelevant for this case.

13 There are issues on both sides. Yes, there was an  
14 eight-and-a-half million dollar payment to Mr. Thiam in a Hong  
15 Kong account. By the same token, there was testimony from the  
16 two fact witnesses, who were members of government at the time,  
17 that the government and the country of Guinea, that they needed  
18 a massive cash influx in 2010 to operate; that the deal with  
19 Chinese International Fund allowed for a \$75 million loan from  
20 CIF to the country of Guinea to happen immediately, that  
21 allowed for them to operate, allowed for them to have the  
22 services for the people, water, food, et cetera; that every  
23 member of parliament at the time was in favor of the deal.

24 All that was isolated from the jury because it is  
25 irrelevant to the crime itself, and beyond that scope, as I

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1 said, zero evidence at any stage of this case that Mr. Pa, or  
2 his associates, had any intention of somehow taking other money  
3 and giving it to the people of Guinea.

4 Beyond that, the argument, as Mr. Kobre just brought  
5 forth, Daouda Camara testified his concerns about the  
6 exclusivity portions of the joint venture agreement were belied  
7 on cross-examination because while he felt concern about any  
8 exclusivity aspect, he also disclaimed a knowledge of whether  
9 the severability clause that was included in the contract would  
10 have permitted the Guinean government to get out of it.

11 And it was clear contract law, although I'm professed  
12 not an expert in contract law and the clauses in contract law  
13 internationally. The contract law was unequivocal in stating  
14 that if there's anything that goes against Guinean law, it is  
15 null and void in this agreement. And that severability clause  
16 was in every agreement that was brought into evidence at this  
17 trial.

18 So the notion that the government argued at trial, and  
19 argued again this morning, that the government of Guinea  
20 somehow lost any element of sovereignty through any clause that  
21 may have promised exclusivity rights in these contracts, is  
22 inappropriate and inaccurate because the severability clause  
23 commands every contract that is written, it is universal and it  
24 is explicitly in those contracts and executed by the parties  
25 therein.

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1           So we have the arguments about a loss to the people of  
2   Guinea. To the contrary, whatever factually may have happened  
3   in this case, it is indisputable from the fact witnesses who  
4   testified at this trial from Guinea, that the public of Guinea  
5   benefited, at least in the short term, from having a massive  
6   influx of cash to run their country. So to those ends, we  
7   certainly argue against the arguments -- we oppose the  
8   arguments brought forth by the government in their submission  
9   and this morning.

10           And in terms of the level of deterrence, the Court  
11   quite accurately characterized the defense sentencing arguments  
12   that have been put forth in our submission. Under 3553(a),  
13   there are other cases that are similar. This is a case that  
14   should be taken in isolation, as an isolated incident, even if  
15   accepted through the conviction.

16           The element of deterrence is a powerful one, even  
17   under the circumstance. Whether the Court were to give  
18   Mr. Thiam a 60-month sentence or 12-month sentence sends a  
19   strong message that anyone involved in laundering in the U.S.,  
20   even if it involves activity overseas, far away from a time  
21   distant in the past, will be held accountable.

22           And in the class of defendants that we typically  
23   characterize as white collar that face these offenses,  
24   deterrence has a much more profound meaning than we experience  
25   in other more commonly characterized street crimes. These are

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1 individuals typically of middle or upper class, typically  
2 individuals like Mr. Thiam, who have never been in trouble with  
3 the law before, typically who are professionals who face  
4 numerous collateral consequences to any negative action in a  
5 courtroom that far ripple out beyond the mere sentence.

6 So deterrence is here. Deterrence has already  
7 happened. Mr. Thiam has been in jail since his indictment,  
8 since his arrest. He will stand, regardless of the Court's  
9 consideration at sentencing, to be in jail for some time  
10 longer. He has lost his ability to earn income, lost his  
11 ability to provide for his family, likely lost any future  
12 opportunities to engage in the financial sectors in this  
13 country, certainly in most countries in the world with this  
14 particular case, especially with the media attention that it  
15 drew internationally.

16 He is a man who will, whether the Court releases him  
17 today, in 50 months, 60 months or a time after, will be a man  
18 who has been forever significantly changed going forward as a  
19 result of this case alone. There is massive deterrence that is  
20 here, even in a case that, under a guidelines calculation, my  
21 arguments in submission would be a significant departure from.  
22 So in that respect, I wanted to follow up not only with the  
23 government's arguments, but also with our submissions  
24 previously put forth. Thank you.

25 THE COURT: Thank you very much, Mr. Goldsmith.

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1 Again, I want to compliment you on your extraordinarily  
2 impressive performance on behalf of your client at trial.

3 Mr. Thiam, I'll hear anything you have to say on your  
4 own behalf in connection with the sentence. I have read your  
5 letter that you submitted to me. I'm happy to have any further  
6 statement that you'd like to make.

7 THE DEFENDANT: Your Honor, if you had time to read my  
8 letter, I thank you for that. That's all I have to say. Thank  
9 you.

10 THE COURT: You're welcome.

11 I found the defense submissions and the government's  
12 submission very helpful, but I'm focusing in particular on the  
13 many letters that were submitted by people who know and care  
14 for the defendant. They helped create a better picture in my  
15 mind of who the defendant is and how to place this  
16 extraordinarily serious violation of law in context.

17 I believe that the sentence I will announce here would  
18 be the same whether the offense level was 32 or 34 or even 30.  
19 I've tried to think holistically, consider the guidelines, but  
20 then step back and consider, as I must under 3553(a),  
21 everything that I have learned.

22 The defendant comes from a family that was itself the  
23 victim of political upheaval in Guinea. His father was  
24 executed, and the defendant became a refugee at a young age.  
25 He thrived abroad and in this country due to his talents, his



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1 hard work and his wonderful family support.

2 He chose ultimately to settle in this country, to  
3 raise his children because, as I understand it, he wanted to  
4 give them the advantage of everything that this country might  
5 be able to offer to them as they became adults.

6 At the time of our own country's financial crisis, he  
7 was invited to return to Guinea and be its Minister of Mines.  
8 That would require him to leave the comfort of home and family,  
9 to leave the security of a life in the United States, give him  
10 the opportunity to go to the nation of his birth, a desperately  
11 poor country, but one that was very rich in natural resources  
12 but that had no real ability to develop its resources without  
13 outside investment.

14 The defendant, as I understand it, didn't find this an  
15 easy decision to make, and he consulted with several other  
16 people who have written to me. Some advised him against this.  
17 Some advised him to do it. I believe he made the decision to  
18 go to Guinea out of a desire to help others in his homeland. I  
19 believe it was a virtuous decision.

20 What he found there was a deeply dysfunctional  
21 country. Corruption was embedded in the country. Violence was  
22 known in the country by those in government and elsewhere.  
23 There was an absence of stable government institutions, absence  
24 of rule of law in the way that we know it and, of course, there  
25 was deep poverty, which he expected to find and did find.

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1           There was a desperate need for infrastructure. There  
2 was a desperate need for employment. There was a desperate  
3 need for development. The defendant took upon himself this  
4 pivotal position that he was offered. He had the power in that  
5 position to act good in the country or not. I have evidence  
6 that he tried in many circumstances to act honorably. He saw  
7 corruption all around him. He decided ultimately to succumb to  
8 corruption, and with that decision, deprived Guinea of his  
9 honest services.

10           I certainly agree with what the defendant has argued  
11 in its papers and again to me today, that I don't need to  
12 decide whether the eight-and-a-half million dollar bribe he  
13 took worsened Guinea's situation financially. I don't even  
14 feel I need to decide whether the existence of that bribe  
15 altered in any meaningful way the kind of advice he gave Guinea  
16 with respect to this contract. I don't think I need to decide  
17 whether the contract was in Guinea's interests. I don't think  
18 I need to decide whether if he had been a good and faithful  
19 servant to Guinea, he could have improved upon its terms,  
20 negotiated differently, supported others who were questioning  
21 its wisdom at least to some of its provisions.

22           The undisputed fact is that he took a bribe over a  
23 contract that was extraordinarily significant to Guinea and  
24 significant to the investors who were pouring resources into  
25 Guinea. It was a huge bribe, eight-and-a-half million dollars.

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1 It deprived Guinea of his honest services. It was a violation  
2 of Guinean law. It was a violation of American law.

3 The defendant knew immediately that what he was doing  
4 was terribly wrong. He took many steps to conceal what he was  
5 doing. He lied to banks repeatedly. He engaged in convoluted  
6 financial transactions to disguise what was happening with the  
7 funds. He absolutely knew he had betrayed Guinea. And, of  
8 course, that kind of corruption, as is reflected here, is  
9 profound for any nation. It's profound on different levels  
10 when a public official accepts bribes in the performance of  
11 their duties.

12 It deprives a nation of the good judgment and good  
13 services and faithful services of its representatives, but  
14 beyond that, it destroys a citizenry's confidence in its system  
15 of governments, and with that loss of confidence, the  
16 understanding within a nation that its officials are corrupt,  
17 who are more engaged about looking out for their own financial  
18 benefit than for the benefit of the country that they're  
19 supposed to serve, the rule of law is undermined and a nation  
20 is weakened.

21 Now, the opportunity for corruption exists everywhere.  
22 The question is, how does a nation respond? How does it care  
23 about the rule of law and the honest services of its government  
24 officials? In the United States, our Congress has spoken. It  
25 will not be tolerated. It is a violation of our law, and it's

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1 a violation of our law even when the bribe is paid abroad to a  
2 corrupt foreign official if that violation of the foreign  
3 country's laws is sufficiently connected to the United States,  
4 as the jury found it was here. And, of course, we have a  
5 United States citizen receiving that bribe, United States  
6 financial institutions being involved in the transfer of those  
7 monies, a United States property purchased with those monies.

8 So that brings me to the question of punishment. What  
9 is the appropriate punishment here for this very serious crime?  
10 The defendant has done a great deal of good in his life. He  
11 has supported numerous charities in Africa. He's helped to  
12 educate impoverished youth. I find he went to Guinea to help,  
13 not to rob it. I find he did help it in many ways. Sometimes  
14 when he spoke out with great courage and wisdom, it was at risk  
15 to himself, and his advice was not heeded.

16 On the other hand, the defendant has shown no remorse  
17 for what he did here. I sense no acknowledgment of the deep  
18 injury he has done to Guinea and to the rule of law. I even  
19 sense a whiff of entitlement.

20 He indicated -- there's dispute in the evidentiary  
21 record about this, about whether he took a salary in Guinea,  
22 but he at least took the position that he didn't take a salary  
23 in some circumstances. He didn't take reimbursement for travel  
24 expenses. He left the comfort of his family and friends in  
25 New York and the relative security of life here, compared to

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1 the dangers he faced in Guinea, and so maybe he felt he was  
2 entitled to take a bribe. The fact is, he did take one,  
3 eight-and-a-half million dollars.

4 I don't find the sentence outlined, even by revised  
5 sentencing guidelines calculations, to be appropriate here.  
6 Even if I found an offense level of 32 or an offense level 34,  
7 whatever, I think that the sentencing range is too vast. On  
8 the other hand, I don't find that a sentence of 60 months, as  
9 the defendant has requested, is appropriate either.

10 The defendant sentenced in the Eastern District is in  
11 no material way comparable in role and circumstances to give  
12 any guidance with respect to this.

13 Considering all the factors I've described here, I'm  
14 prepared to impose sentence. Mr. Thiam, please stand. I  
15 impose a term of imprisonment of 84 months, to be followed by a  
16 term of supervised release of three years, with the following  
17 special conditions. You must cooperate in the collection of  
18 DNA. You must comply with the standard conditions of  
19 supervision. You are subject to the forfeiture order that I  
20 have signed today. You must submit to a reasonable search by  
21 the probation department. You must seek and maintain full-time  
22 employment. You shall provide the probation department access  
23 to any and all requested financial information. You may not  
24 incur any new credit card charge or open any new credit line  
25 without approval of the probation department. You shall notify

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1 the U.S. Attorney's Office for this district within 30 days of  
2 any change of mailing or residence address while any portion of  
3 the forfeiture remains unpaid.

4 You shall be supervised by the district of your  
5 residence. You shall pay a special assessment of \$200. I  
6 decline to impose a fine, given the enormity of the forfeiture  
7 order that I have signed.

8 Counsel, is there any legal reason why I cannot impose  
9 the sentence I've described as stated?

10 MR. KOBRE: Not from the government.

11 MR. GOLDSMITH: No, your Honor.

12 THE COURT: I order the sentence I've described on the  
13 record to be imposed as stated. I don't believe there are any  
14 open counts.

15 MR. KOBRE: There are not.

16 THE COURT: I need to advise you of your right to  
17 appeal, Mr. Thiam. If you're unable to pay the cost of an  
18 appeal, you may apply for leave to appeal in forma pauperis.  
19 Any notice of appeal must be filed within 14 days of the  
20 judgment of conviction.

21 I'm going to recommend to the Bureau of Prisons that  
22 you be given medical treatment for your diabetes.

23 Counsel, is there any other requests that you have?

24 MR. GOLDSMITH: Further request the recommendation  
25 that he be housed as close to the greater New York City area as

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possible.

THE COURT: I will make that recommendation. Anything else?

MR. GOLDSMITH: No, your Honor.

THE COURT: All right.

(Adjourned)